

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOSE R. BARRERA,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 05-40107-RWZ
v.	)	
	)	
DAVID WINN, ET AL.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND COMPLAINT**

Defendants in the above-captioned matter oppose the Plaintiff's Motion for Leave to Amend the Complaint to include a challenge to the Federal Bureau of Prisons' ("BOP") authority under 18 U.S.C. § 4042(c) to notify state and local authorities, *inter alia*, that the Plaintiff must register as a sex offender prior to his release from prison. The Court should deny Plaintiff's motion because his proposed challenge is futile.

Plaintiff's Motion states that his Amended Complaint will seek an order enjoining the BOP from following the provisions of § 4042(c)(2) with regard to Plaintiff. There is no basis to enjoin the BOP from providing such a notification however. First, because Plaintiff has failed to exhaust his administrative remedies, he should not be able to pursue this action at all. Second, the BOP properly construed the term "sexual offense," as that term is used in § 4042(c)(4)(E), in concluding that Plaintiff's prior state conviction for rape requires the BOP to

apply to him the provisions of § 4042(c)(2) prior to his release from BOP custody. Accordingly, Defendants respectfully request that the Court deny Plaintiff's Motion to Amend the Complaint on the grounds of futility.

## **II. BACKGROUND**

### **A. Plaintiff's Current And Past Convictions**

Plaintiff was sentenced in the United States District Court for the Eastern District of New York for conspiracy to distribute and possession with intent to distribute heroin, in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(b), on June 28, 2000. See accompanying Declaration of Diana Jacobs Lee ("Lee Dec."), ¶2 and Exhibit ("Ex.") A thereto. The court sentenced Plaintiff to a 97-month prison term in the custody of BOP. See Lee Dec. ¶2, Ex. A. Plaintiff's current projected release date, taking into account projected "good conduct" credit is October 21, 2006. See Lee Dec. ¶2, Ex. A.

In 1963, Plaintiff was convicted of rape in the criminal court of Queens, New York, when he was 19 years old. See Lee Dec. ¶3. A 1981 local presentence report indicated that between April 10, 1963, and April 15, 1963, Plaintiff, who was 19 years old, had sexual intercourse on two occasions with a female person who was less than 17 years old. See id. The Plaintiff later married this person in 1965. See id.

**B. Plaintiff's Administrative Remedy Request**

Pursuant to 28 C.F.R. § 542.10, federal inmates "may seek formal review of an issue which relates to any aspect of their confinement." The formal review process consists of three steps. First, the inmate must file an administrative remedy request, to which the Warden must respond within 20 days. 28 C.F.R. §§ 542.14, 542.18. Second, if the inmate is not satisfied with the Warden's response, the inmate may appeal within 20 days to the BOP Regional Director, who then must respond to the appeal within 30 days. 28 C.F.R. §§ 542.15(a), 542.18. Finally, if the inmate is not satisfied with the Regional Director's response, the inmate may appeal within 30 days to the BOP General Counsel, who then must respond within 40 days. 28 C.F.R. §§ 542.15(a), 542.18.

On June 10, 2004, Plaintiff filed an administrative remedy requesting that the BOP (i) explain why it had assigned him a Public Safety Factor ("PSF") based on the Plaintiff's 1963 conviction, and (ii) remove the PSF. See Lee Decl. ¶5, Exh. C. Warden Winn denied this request on July 6, 2004. See Lee Decl. ¶5, Exh. D. In the denial, the Warden explained that because of Plaintiff's 1963 conviction for rape, the BOP had assigned the Plaintiff with a PSF of Sex Offender based on the criteria set forth in Program Statement 5100.7. See id. On July 12, 2004, Plaintiff appealed the Warden's decision to the BOP's Regional

Director. See Lee Decl. ¶5, Exh. E. The Regional Director denied the appeal on August 11, 2004. See Lee Decl. ¶5, Exh. F. Plaintiff then appealed the Regional Director's decision to the BOP General Counsel's Office on August 24, 2004; see Lee Decl. ¶5, Exh. G; which was denied on November 19, 2004. See Lee Decl. ¶5, Exh. H.

Plaintiff never filed an administrative remedy request challenging the BOP's authority to apply to him the provisions of § 4042(c)(2).

### **III. ARGUMENT**

#### **A. Standard Of Review**

A Court may deny a motion for leave to amend a complaint when the proposed amendment would be futile. Foman v. Davis, 371 U.S. 178, 182 (1962). "'Futility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted." Glassman v. Computervision Corp., 90 F.3d 617, 623 (1st Cir. 1996). Here, Plaintiff's proposed amendment challenging the BOP's authority to apply to him the provisions of § 4042(c)(2) prior to his release from BOP custody is futile for the reasons articulated below.

#### **B. BOP's Obligation To Notify State And Local Authorities About Sex Offenders**

Congress has directed that, prior to the release of a "sex offender," the BOP shall provide state and local officials with notice of "the place where the person will reside, and . . .

[that] the person shall be subject to a registration requirement as a sex offender." 18 U.S.C. § 4042(c)(2). For purposes of this statutory notification requirement, Congress has defined "sex offender" to include any person who "was convicted" of certain specified federal offenses, as well as "[a]ny other offense designated by the Attorney General as a sexual offense for purposes of this subsection." 18 U.S.C. § 4042(c)(4)(E). The Attorney General has delegated to the BOP authority to designate additional sexual offenses under § 4042(c)(4)(E). See 28 C.F.R. § 571.71. The BOP has designated these offenses to include "[a]ny offense under the law of any jurisdiction that involved: (1) Engaging in sexual contact with another person without obtaining permission to do so (forcible rape, sexual assault, or sexual battery). . . ." 28 C.F.R. § 571.72(a).

**C. The Court Should Dismiss The Motion To Amend The Complaint Because Plaintiff Has Not Exhausted His Administrative Remedies**

As stated above, Plaintiff never filed an administrative remedy request challenging the BOP's authority to apply to him the provisions of § 4042(c)(2). Federal courts have limited jurisdiction and, therefore, may review the actions of a federal agency like the BOP only if authorized by statute. See, e.g., Bell v. New Jersey, 461 U.S. 773, 777 (1983). Therefore, Plaintiff cannot bring an action pursuant to the Administrative Procedure Act ("APA") to challenge the BOP's determination that

he is a sex offender for purposes of the notification requirement of § 4042(c) until he exhausts his administrative remedies. See 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.").

Further, Court decisions in prisoner cases have imposed an exhaustion requirement as a matter of federal common law. See, e.g., McCarthy v. Madigan, 503 U.S. 140, 144 (1992); Gonzales v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2003); James v. Walsh, 308 F.3d 162, 167 (2d Cir. 2002); Castro-Cortez v. I.N.S., 239 F.3d 1037, 1047 (9th Cir. 2001); Rogers v. United States, 180 F.3d 349, 358 (1st Cir. 1999). See also Moscato v. Federal Bureau of Prisons, 98 F.3d 757 (3d Cir. 1996) (requiring exhaustion in case challenging constitutionality of disciplinary hearing resulting in loss of good time credits); United States v. Brann, 990 F.2d 98, 103-104 (3d Cir. 1993) (same, where prisoner sought credit for time served under house arrest); Gonzalez v. Perrill, 919 F.2d 1 (2d Cir. 1990) (same, in case challenging BOP failure to give proper credit for time served). As explained in Arias v. United States Parole Commission, 648 F.2d 196, 199 (3d Cir. 1981), "We have adhered to the exhaustion doctrine for several reasons: (1) judicial review may be facilitated by allowing the appropriate agency to develop a factual record and apply its expertise, (2) judicial time may be conserved because

the agency might grant the relief sought, and (3) administrative autonomy requires that an agency be given an opportunity to correct its own errors." Accordingly, the Court should deny Plaintiff's Motion for Leave to amend his Complaint to include a challenge to the BOP's authority to apply to him the provisions of § 4042(c)(2) because he failed to exhaust this challenge administratively.

**D. The Court Should Deny Plaintiff's Motion Because He Cannot Receive Injunctive Relief**

Plaintiff's Motion states that his Amended Complaint will seek injunctive relief enjoining the BOP from applying to him the notification requirements of § 4042(c)(2). Injunctive relief would be improper, however, because Plaintiff, as already discussed, has not exhausted his administrative remedies. Moreover, for the reasons discussed below, even if Plaintiff had exhausted his administrative remedies before filing this action, he still could not demonstrate entitlement to injunctive relief.

Section 4042(c)(4) creates a notification obligation when an inmate "was convicted" of any of a number of "sexual offense[s]." Subsections 4042(c)(4)(A)-(D) delineate several such offenses, all federal sex crimes, and then Section 4042(c)(4)(E) gives the Attorney General broad discretion to designate "[a]ny other offense" as a "sexual offense." (Emphasis added.) When, as is in this instance, Congress has "explicitly left a gap for an agency to fill, there is an express delegation of authority to

the agency to elucidate a specific provision of the statute by regulation.” Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-44 (1984). “[A]ny ensuing regulation [such as 28 C.F.R. § 571.72(a)] is binding on the courts unless procedurally defective, arbitrary or capricious in substance, or manifestly contrary to the statute.” United States v. Mead Corp., 533 U.S. 218, 227 (2001).

The United States District Court for the District of New Jersey is the only court to have found that BOP’s authority to notify state and local authorities that a prisoner must register as a sex offender upon his release from prison extends only to those prisoners who committed federal sexual offenses. See Simmons v. Nash, 361 F.-Supp.-2d 452 (D.N.J. 2005). Defendants respectfully submit that Simmons was wrongly decided, and that 28 C.F.R. § 571.72(a) reflects a permissible interpretation of 18 U.S.C. § 4042(c) (4) (E).

Indeed, the Simmons court erred in implicitly concluding that 28 C.F.R. § 571.72(a), with its inclusion of past state sex crime convictions within the scope of “sexual offenses” of which an inmate “was convicted,” is manifestly contrary to Section 4042(c) (4) (E). See Simmons, 361 F.-Supp.-2d at 457. The Simmons court found that Section 4042(c) (4) (E) should be limited only to federal offenses, because Subsections 4042(c) (4) (A)-(D) reflect such a limitation. See Simmons, 361 F.-Supp.-2d at 458. But the



plain language of Section 4042(c)(4)(E), with its reference to "[a]ny other offense," shows that it not so limited. Adoption of the holding of the Simmons court would render Section 4042(c)(4)(E) practically meaningless, and would be contrary to "the settled rule that a statute must, if possible, be construed in such fashion that every word has some operative effect." United States v. Nordic Village, Inc., 503 U.S. 30, 35 (1992). This Court should not propagate the Simmons court's error.

Even if this Court were to favor the Simmons court's interpretation of Section 4042(c)(4)(E) over the BOP interpretation reflected in 28 C.F.R. § 571.72(a), the Court still should uphold the regulation. The Supreme Court has made clear that "it is not necessary for a court to find that the agency's construction [of a statute] was the only reasonable one or even the one the court would have reached if the question initially had arisen in a judicial proceeding." Federal Election Comm'n v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 39 (1981). As the Court held in Chevron, when Congress has been silent with a respect to a particular issue, as it has with respect to what constitutes a "sexual offense" under Section 4042(c)(4)(E), the reviewing court need only find that the rule "is based on a permissible construction of the statute." Chevron, 467 U.S. at 843 (emphasis added); see also Heno v. FDIC, 20 F.3d 1204 (1st Cir. 1994) (deferring to agency decision that

did not reflect most natural reading of statute but nonetheless reflected "a 'permissible' reading"). Contrary to the holding of the Simmons court, Section 4042(c)(4)(E) does not mandate that the interpreting regulation encompass only the current federal offense for which the inmate is in BOP custody. Exercising the authority delegated to it by the Attorney General, the BOP's regulation applies the literal language of the statute and includes "sexual offense[s]" like rape, an offense for which Plaintiff indisputably "was convicted." Consequently, it is a permissible reading of the statute to include Plaintiff within the class of inmates to which the Section 4042(c)(2) notification requirement applies. See Montalvo v. Snyder, 207 F.-Supp.-2d 581, 586 (E.D. Ky. 2002) (holding that "application of the notification requirements" to the plaintiff, a federal prisoner who previously had been convicted on a state sex charge, was "called for under the statute [and] regulation"), aff'd, 84 Fed. Appx. 521 (6th Cir. 2003).

Notably, the Simmons court relied heavily - and improperly - on the Fifth Circuit's decision in Henrikson v. Guzik, 249 F.3d 395 (5th Cir. 2001), a case involving 18 U.S.C. § 4042(b), a separate statutory notification requirement for violent criminals and drug offenders. See Simmons, 361 F.-Supp.-2d at 455-57. The Henrikson court held that prior offenses do not trigger the notification requirement of Section 4042(b). See Henrikson, 249

F.3d at 399. Henrikson, however, is distinguishable from this case in two important ways. First, in contrast to Section 4042(c)(4), Section 4042(b)(3) merely specifies two categories of crimes that will trigger that statute's notification requirement; unlike 4042(c)(4), Section 4042(b)(3) does not delegate authority to designate "any other offenses." Second, in interpreting Section 4042(b)(3), the BOP has issued only a program statement, which, according to the Henrikson court, was not entitled to full Chevron deference. See Henrikson, 249 F.3d at 398; but see Reno v. Koray, 515 U.S. 50, 61 (1995) ("BOP's internal agency guideline . . . is still entitled to some deference, since it is a permissible construction of the statute." (citing Chevron, 467 U.S. at 843)). By contrast, pursuant to Section 4042(c)(4)(E), the BOP has promulgated a regulation (28 C.F.R. § 571.72(a)), after notice and comment, that clearly is entitled to full Chevron deference. See Chevron, 467 U.S. at 844; see also Burnhart v. Walton, 535 U.S. 212, 222 (2002). Henrikson, therefore, arises from a different statutory and regulatory background and cannot support a finding that the regulation now at issue, 28 C.F.R. § 571.72(a), is an impermissible interpretation of Section 4042(c)(4)(E).

Finally, even if this Court were to conclude that 28 C.F.R. § 571.72(a) impermissibly exceeded the delegated authority of Section 4042(c)(4)(E), the Court still should deny Plaintiff's

Motion for Leave to amend his Complaint to include a request for injunctive relief, because the BOP is not prohibited from notifying state and local authorities in any event. As the court observed in Bunn v. Conley, 309 F.3d 1002 (7th Cir. 2002), a case involving the notification requirements of Section 4042(b), "[i]t is a substantial stretch to infer from Congress's decision to impose this [notification] duty on the BOP the additional notion that Congress meant to forbid the BOP from notifying interested public authorities in other situations, or in fact from doing a whole host of things." Id. at 1010. Likewise, Section 4042(c) imposes only affirmative notification duties on the BOP, and does not restrict the BOP from notifying state and local authorities upon the release of inmates with prior sexual offenses. Defendants are aware of no such restriction, and Plaintiff has not pointed to one. Accordingly, there is no basis to enjoin the BOP from applying the notification provisions of § 4042(c) to Plaintiff prior to his release from custody, and, therefore, his proposed amendment would be futile.

**CONCLUSION**

Accordingly, for the reasons articulated above, the Court should deny Plaintiff's Motion for Leave to Amend the Complaint.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Damian W. Wilmot  
DAMIAN W. WILMOT  
Assistant U.S. Attorney  
Moakley Federal Courthouse  
One Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3100

Dated: September 15, 2005

CERTIFICATE OF SERVICE

I certify that on September 15, 2005, I caused a copy of the foregoing Opposition to be served on Plaintiff by first class mail, postage pre-paid to Jose R. Barrerra, Reg, No. 57833-053, FMC Devens, P.O. Box 879, Ayer, MA 01432.

/s/ Damian W. Wilmot  
DAMIAN W. WILMOT  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOSE BARRERA,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 05-40107
	:	
DAVID WINN, et al.,	:	
	:	
Defendants.	:	

DECLARATION OF DIANA JACOBS LEE

I, Diana Jacobs Lee, make the following declaration under penalty of perjury:

1. I am an Assistant Regional Counsel at the Northeast Regional Office, Federal Bureau of Prisons, Philadelphia, Pennsylvania. I have been employed with the Federal Bureau of Prisons since June 29, 2003. As part of my official duties, I have access to Bureau of Prisons files maintained in the ordinary course of business on inmates incarcerated within the Federal Bureau of Prisons.

2. On June 28, 2000, petitioner Jose Barrera was sentenced in the United States District Court for the Eastern District of New York for conspiracy to distribute and possession with intent to distribute heroin, in violation of 21 U.S.C §§ 846, 841(a)(1) and 841 (b)(1)(b). The court sentenced Petitioner to a 97-month prison term in the custody of the BOP. Petitioner is currently serving his sentence at the Federal Correctional Institution in Fort Dix, New Jersey. His current projected release date, taking into account projected "good conduct" credit is October 21, 2006.

Attached hereto as Exhibit A is a true and correct copy of a printout from the BOP's Public Information Inmate Data reflecting the foregoing information.

3. Pursuant to Bureau of Prisons Program Statement 1351.05, Release of Information, an inmate may not possess his or her Presentence Investigation Report ("PSR"). Inmates who wish to review their PSRs may access, review, and make notes from them upon submission of a request to a member of their Unit Team. I have reviewed the PSR for inmate Jose Barrera, Register number 57833-053, which is maintained in the ordinary course of business at each inmate's institution. According to the PSR, petitioner was convicted of Rape in the criminal court of Queens, New York in 1963 when he was 19 years old. A 1981 local presentence report indicated that between April 10, 1963, and April 15, 1963, the petitioner had sexual intercourse on two occasions with a female who was less than 17 years old at the time of the offense. This female married the defendant in 1965 and related that although she had consensual sexual relations with the defendant, her parents pressed charges because she was 16 years old and the defendant was 19 years old.


4. Attached hereto as Exhibit B is a true and correct copy of Chapters 1 and 7 from BOP Program Statement 5100.07, Security Designation and Classification Manual.

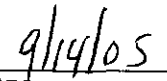
5. Attached hereto as Exhibit C is a true and correct copy of an administrative remedy request that Petitioner filed on June 10,

2004. Attached hereto as Exhibit D is a true and correct copy of Warden Winn's denial of this request. Attached hereto as Exhibit E is a true and correct copy of petitioner's appeal to the BOP Regional Director concerning the Warden's denial. Attached hereto as Exhibit F is a true and correct copy of the Regional Director's denial of petitioner's appeal. Attached hereto as Exhibit G is a true and correct copy of petitioner's appeal to the BOP General Counsel's Office concerning the Regional Director's denial. Attached hereto as Exhibit H is a true and correct copy of the General Counsel's Office's denial of petitioner's appeal.

6. On August 10, 2005, Bureau of Prisons ("BOP") waived inmate Jose Barrera's Public Safety Factor classification under Program Statement 5100.07 and removed him from the Sexual Offender Management Program. This waiver made Petitioner eligible for a transfer and placement in a minimum security prison. Petitioner has been transferred and is currently designated to the Federal Correction Institution in Fort Dix, New Jersey.

I declare the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746.

  
Diana Jacobs Lee  
Assistant Regional Counsel  
Northeast Regional Office  
Federal Bureau of Prisons

  
Date



## **EXHIBIT A**

NERH1 \* PUBLIC INFORMATION \* 09-13-2005  
PAGE 001 \* INMATE DATA \* 16:10:47  
AS OF 09-13-2005

REGNO.: 57833-053 NAME: BARRERA, JOSE RAYMOND  
COMP NO: 010 ALL CURR COMPS(Y/N): Y ALL PRIOR COMPS(Y/N): Y  
FUNC...: DIS RESP OF: FTD / DESIGNATED, AT ASSIGNED FACIL  
PHONE...: 609-723-1100 FAX: 609-723-6847  
RACE/SEX...: WHITE / MALE  
FBI NUMBER.: 362809E DOB/AGE....: 07-14-1944 / 61  
PROJ REL MT: GOOD CONDUCT TIME RELEASE PAR ELIG DT: N/A  
PROJ REL DT: 10-21-2006 PAR HEAR DT:

----- ADMIT/RELEASE HISTORY -----  
FCL ASSIGNMENT DESCRIPTION START DATE/TIME STOP DATE/TIME  
FTD A-DES DESIGNATED, AT ASSIGNED FACIL 09-07-2005 2055 CURRENT  
7-F RELEASE RELEASED FROM IN-TRANSIT FACIL 09-07-2005 2055 09-07-2005 2055  
7-F A-ADMIT ADMITTED TO AN IN-TRANSIT FACIL 09-07-2005 0750 09-07-2005 2055  
DEV FURL TR NC FURL W/UNESCORT TRF NOT TO CCC 09-07-2005 0750 09-07-2005 0750  
DEV A-DES DESIGNATED, AT ASSIGNED FACIL 08-16-2005 2128 09-07-2005 0750  
DEV LOCAL HOSP ESC TRIP TO LOCAL HOSP W/RETN 08-16-2005 1257 08-16-2005 2128  
DEV A-DES DESIGNATED, AT ASSIGNED FACIL 08-16-2005 1256 08-16-2005 1257  
DEV LOCAL HOSP ESC TRIP TO LOCAL HOSP W/RETN 08-16-2005 1147 08-16-2005 1256

G0002 MORE PAGES TO FOLLOW . . .

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PAGE 002\*  
\*PUBLIC INFORMATION  
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\*09-13-2005  
16:10:47

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COMP NO: 010 ALL CURR COMPS(Y/N): Y ALL PRIOR COMPS(Y/N): Y  
FUNC...: DIS RESP OF: FTD / DESIGNATED, AT ASSIGNED FACIL  
PHONE...: 609-723-1100 FAX: 609-723-6847

DEV	A-DES	DESIGNATED, AT ASSIGNED FACIL	03-31-2004	0953	08-16-2005	1147
5-L	RELEASE	RELEASED FROM IN-TRANSIT FACIL	03-31-2004	0953	03-31-2004	0953
5-L	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	03-31-2004	0417	03-31-2004	0953
FTD	TRANSFER	TRANSFER	03-31-2004	0417	03-31-2004	0417
FTD	A-DES	DESIGNATED, AT ASSIGNED FACIL	05-08-2003	1305	03-31-2004	0417
S38	RELEASE	RELEASED FROM IN-TRANSIT FACIL	05-08-2003	1305	05-08-2003	1305
S38	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	05-08-2003	1210	05-08-2003	1305
BRO	HLD REMOVE	HOLDOVER REMOVED	05-08-2003	1210	05-08-2003	1210
BRO	A-HLD	HOLDOVER, TEMPORARILY HOUSED	04-16-2003	1845	05-08-2003	1210
A01	RELEASE	RELEASED FROM IN-TRANSIT FACIL	04-16-2003	1845	04-16-2003	1845
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	04-16-2003	0802	04-16-2003	1845
ATL	HLD REMOVE	HOLDOVER REMOVED	04-16-2003	0802	04-16-2003	0802
ATL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	04-15-2003	1948	04-16-2003	0802

G0002 MORE PAGES TO FOLLOW . . .

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PAGE 003 \* INMATE DATA \* 16:10:47  
AS OF 09-13-2005

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FUNC...: DIS RESP OF: FTD / DESIGNATED, AT ASSIGNED FACIL  
PHONE...: 609-723-1100 FAX: 609-723-6847  
PRE-RELEASE PREPARATION DATE: 04-21-2006

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.  
THE INMATE IS PROJECTED FOR RELEASE: 10-21-2006 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: NEW YORK, EASTERN DISTRICT  
DOCKET NUMBER.....: CR-99-1029 (ARR)  
JUDGE.....: ROSS  
DATE SENTENCED/PROBATION IMPOSED: 06-28-2000  
DATE COMMITTED.....: 08-22-2000  
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT  
PROBATION IMPOSED.....: NO

G0002 MORE PAGES TO FOLLOW . . .

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PAGE 004

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PUBLIC INFORMATION  
INMATE DATA  
AS OF 09-13-2005

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09-13-2005  
16:10:47

REGNO...: 57833-053 NAME: BARRERA, JOSE RAYMOND  
COMP NO: 010 ALL CURR COMPS(Y/N): Y ALL PRIOR COMPS(Y/N): Y  
FUNC...: DIS RESP OF: FTD / DESIGNATED, AT ASSIGNED FACIL  
PHONE...: 609-723-1100 FAX: 609-723-6847

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----  
OFFENSE CODE....: 391  
OFF/CHG: 21;846, 841 (A) ((1) & 841(B) (1) (B) CONSPIRACY TO DISTRIBUTE  
AND POSSESS WITH INTENT TO DISTRIBUTE HEROIN

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE  
SENTENCE IMPOSED/TIME TO SERVE.: 97 MONTHS

G0002 MORE PAGES TO FOLLOW . . .

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PAGE 005

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PUBLIC INFORMATION  
INMATE DATA  
AS OF 09-13-2005

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09-13-2005  
16:10:47

REGNO.: 57833-053 NAME: BARRERA, JOSE RAYMOND  
COMP NO: 010 ALL CURR COMPS(Y/N): Y ALL PRIOR COMPS(Y/N): Y  
FUNC...: DIS RESP OF: FTD / DESIGNATED, AT ASSIGNED FACIL  
PHONE...: 609-723-1100 FAX: 609-723-6847  
TERM OF SUPERVISION.....: 5 YEARS  
DATE OF OFFENSE.....: 09-11-1999

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 10-24-2000 AT COL AUTOMATICALLY

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN  
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 06-28-2000  
TOTAL TERM IN EFFECT.....: 97 MONTHS  
TOTAL TERM IN EFFECT CONVERTED...: 8 YEARS 1 MONTHS  
EARLIEST DATE OF OFFENSE.....: 09-11-1999

G0002 MORE PAGES TO FOLLOW . . .

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PAGE 006

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PUBLIC INFORMATION  
INMATE DATA  
AS OF 09-13-2005

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09-13-2005  
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REGNO...: 57833-053 NAME: BARRERA, JOSE RAYMOND  
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FUNC...: DIS RESP OF: FTD / DESIGNATED, AT ASSIGNED FACIL  
PHONE...: 609-723-1100 FAX: 609-723-6847

JAIL CREDIT.....: FROM DATE THRU DATE  
10-07-1999 06-27-2000

TOTAL PRIOR CREDIT TIME.....: 265  
TOTAL INOPERATIVE TIME.....: 0  
TOTAL GCT EARNED AND PROJECTED...: 380  
TOTAL GCT EARNED.....: 270  
STATUTORY RELEASE DATE PROJECTED: 10-21-2006  
SIX MONTH /10% DATE.....: N/A  
EXPIRATION FULL TERM DATE.....: 11-05-2007

PROJECTED SATISFACTION DATE.....: 10-21-2006

G0002 MORE PAGES TO FOLLOW . . .

NERH1 \*  
PAGE 007 OF 007 \*

PUBLIC INFORMATION \*  
INMATE DATA \*  
AS OF 09-13-2005

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16:10:47

REGNO.: 57833-053 NAME: BARRERA, JOSE RAYMOND  
COMP NO: 010 ALL CURR COMPS(Y/N): Y ALL PRIOR COMPS(Y/N): Y  
FUNC...: DIS RESP OF: FTD / DESIGNATED, AT ASSIGNED FACIL  
PHONE.: 609-723-1100 FAX: 609-723-6847  
PROJECTED SATISFACTION METHOD...: GCT REL

S0055 NO PRIOR SENTENCE DATA EXISTS FOR THIS INMATE



## **EXHIBIT B**

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<b>INTRODUCTION</b>
---------------------

Bureau of Prisons institutions are grouped into security levels: **MINIMUM, LOW, MEDIUM, HIGH**, plus an **ADMINISTRATIVE** category. Seven factors are required to support an institution's security level:

- mobile patrol,
- gun towers,
- perimeter barriers,
- detection devices,
- internal security,
- housing, and
- inmate-to-staff ratio.

Upon receipt of the U.S. Marshals request to place an inmate at a Bureau institution, the Community Corrections Manager assesses the offender's security and program needs, as well as other administrative factors unique to a correctional environment.

The assignment of an inmate to a particular institution is based upon:

The level of security and supervision the inmate requires;

The level of security and staff supervision the institution is able to provide;

The inmate's program needs, i.e., substance abuse, educational/vocational training, individual and/or group counseling, medical/mental health treatment; and,

Various administrative factors such as, but not limited to,

- level of overcrowding,
- the inmate's release residence,
- judicial recommendations,
- separation needs,
- increased security measures, to ensure the protection of victims/witnesses and the public in general.

There are two distinct systems of classification; one for male and one for female offenders. While each classification item is reviewed for each gender, different points may be assessed for the item. The point difference is a result of research conducted

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which indicates that men and women do not react the same in similar situations.

Initial designations to Bureau (or BOP) institutions are accomplished by:

- (1) Community Corrections Managers entering information into a computer database (SENTRY) to compute a security score, and
- (2) Regional and/or Central Office Designators designating an institution based on the score.

A Security/ Designation Data form is required for any inmate with a sentence exceeding **30 days**. Designations to non-federal facilities may also be completed by Community Corrections Managers. Redesignations (transfers) from one Bureau institution to another are also accomplished by Regional and Central Office staff based upon many of the same factors used at the time of initial designation.

The Custody Classification Form (BP-338) may indicate reduced or increased security requirements based on consideration of both pre-commitment and post-commitment variables. Four inmate custody levels are established: **MAXIMUM, IN, OUT, and COMMUNITY**. The lowest level of custody, **COMMUNITY**, is ordinarily reserved for those inmates who meet the qualifications for participation in community activities.

This Manual establishes guidelines for designating the place of imprisonment for each individual. These guidelines are consistent with statutory authority as contained in 18 U.S.C. § 3621(b). All designation and transfer decisions are made without favoritism given to an individual's social or economic status.

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**PUBLIC SAFETY FACTORS AND MANAGEMENT VARIABLES****PUBLIC SAFETY FACTORS**

There are certain factors which require increased security measures to ensure the protection of society. Staff shall apply any of the following Public Safety Factors (PSF) that are appropriate. Up to three PSFs may be entered on the Update Security Designation (BP-337). If more than three applicable Public Safety Factors are identified, use those which would most appropriately control the inmate's placement.

**CODE                      DESCRIPTION - PSF**

**A        NONE.** No Public Safety Factors apply.

**B        DISRUPTIVE GROUP.** A male inmate who is a validated member of a Disruptive Group identified in the Central Inmate Monitoring System shall be housed in a High security level institution, unless the PSF has been waived.

**Note:** At the time of initial designation, if the PSI or other documentation identifies the inmate as a possible member of one of the Central Inmate Monitoring Disruptive Groups, Community Corrections (CC) staff shall indicate a PSF on the BP-337. However, CC staff shall not enter the CIM assignment "Disruptive Group." Upon loading this PSF on a not-yet-validated member, CC staff shall 1) make a notation in the remarks section to indicate the need for validation upon arrival at the institution, and 2) notify the Central Office Intelligence Section, via GroupWise, to advise them of the inmate's status. Upon the inmate's arrival at the designated institution, the intake screener shall notify the institution's Special Investigation Supervisor (SIS) of the inmate's PSF, in order to begin the validation process.

**C        GREATEST SEVERITY OFFENSE.** A male inmate whose current term of confinement falls into the "Greatest Severity" range according to the Offense Severity Scale (Appendix B) shall be housed in at least a Low security level institution, unless the PSF has been waived.

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**CODE                      DESCRIPTION - PSF**

**F'      SEX OFFENDER.** A male or female inmate whose behavior in the current term of confinement or prior history includes one or more of the following elements shall be housed in at least a Low security level institution, unless the PSF has been waived. A conviction is not required for application of this PSF if the PSI, or other official documentation, clearly indicates the following behavior occurred in the current term of confinement or prior criminal history. If the case was dismissed or nolle prosequi, application of this PSF cannot be entered. However, in the case where an inmate was charged with an offense that included one of the following elements, but as a result of a plea bargain was not convicted, application of this PSF should be entered.

**Example:** According to the PSI, the inmate was specifically described as being involved in a Sexual Assault but pled guilty to Simple Assault. Based on the documented behavior, application of this PSF should be entered.

(1) Engaging in sexual contact with another person without obtaining permission to do so (forcible rape, sexual assault or sexual battery);

(2) Possession, distribution or mailing of child pornography or related paraphernalia;

(3) Any sexual contact with a minor or other person physically or mentally incapable of granting consent (indecent liberties with a minor, statutory rape, sexual abuse of the mentally ill, rape by administering a drug or substance);

(4) Any sexual act or contact not identified above that is aggressive or abusive in nature (rape by instrument, encouraging use of a minor for prostitution purposes, incest). Examples may be documented by state or Bureau of Prisons' incident reports, clear NCIC entries, or other official documentation;

(5) Attempts are to be treated as if the sexual act or contact was completed; and/or,

(6) Any offense referenced in the Sex Offender Notification and Registration Program Statement.

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**CODE                      DESCRIPTION - PSF**

**G      THREAT TO GOVERNMENT OFFICIALS.** A male or female inmate classified with a Central Inmate Monitoring assignment of Threat to Government Official shall be housed in at least a Low security level institution, unless the PSF has been waived.

**H      DEPORTABLE ALIEN.** A "Deportable Alien" is a male or female inmate who is a citizen of a foreign country, rather than the United States. In addition, the inmate shall be housed in at least a Low security level institution, unless the PSF has been waived. This PSF also prevents placement in a CCC. Unless an inmate meets all of the below criteria, the PSF shall be applied:

(1) **Documented and/or independently verified history of stable employment in the U.S.** for at least three years immediately prior to incarceration. Stable or regular employment is generally defined as full-time (40 hours a week) work. Part-time or seasonal work prior to incarceration does not meet the definition of stable employment;

(2) **Verified history of domicile in the U.S.** (five or more consecutive years immediately preceding the inmate's incarceration for the current term of confinement). For example, if an inmate was arrested and detained in March 1993 on his or her current conviction and was in the U.S. between 1980 and 1984, and again between 1992 and 1993, a PSF for Deportable Alien shall be applied since the five years were not consecutive and did not immediately precede his or her incarceration; and,

(3) **Verified strong family ties in the U.S.** Strong family ties include **only** the immediate family. Members of immediate family include: mother, father, step-parents, foster parents, brothers and sisters, spouse, and children. The word "spouse" includes a common-law relationship which has previously been established in a state which recognizes such a status. In states which do not, a common-law relationship is not considered "immediate family." For determination of applicable state laws, Regional Counsel should be consulted.

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**CODE                      DESCRIPTION - PSF**

The defendant or the family member's statement to the USPO preparing the PSI is not considered adequate verification for criteria (1) and (2) above.

The PSF shall not be applied when the Immigration and Naturalization Service (INS) or the Immigration Judge has determined that deportation proceedings are unwarranted and the Institution Hearing Program (IHP) Case Management Activity (CMA) assignment of NO IHP or IHP CMP ND is assigned. Conversely, if the inmate is ordered deported (CMA of IHP CMP WD), the Deportable Alien PSF shall be applied regardless of the above criteria. The Deportable Alien PSF shall also be applied when FCI Oakdale institution staff assign the inmate a CMA assignment of "OAK INS," regardless of the above criteria. Cases with detainers for deportation investigations or other unusual situations will be evaluated individually.

- I      SENTENCE LENGTH.** A male inmate with more than ten years remaining to serve shall be housed in at least a Low security level institution unless the PSF has been waived.

A male inmate with more than 20 years remaining to serve shall be housed in at least a Medium security level institution, unless the PSF has been waived.

A male inmate with more than 30 years remaining to serve (including non-parolable LIFE sentences) shall be housed in a High security level institution unless the PSF has been waived.

- K      VIOLENT BEHAVIOR.** A female inmate whose current term of confinement or history involves two convictions (or findings of commission of a prohibited act by the DHO) for serious incidents of violence within the last five years shall be assigned to the Carswell Administrative Unit, FMC Carswell, Texas, unless the PSF has been waived.

- L      SERIOUS ESCAPE.** A female inmate who has been involved in a serious escape within the last ten years, including the current term of confinement, shall be

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CODE                      DESCRIPTION - PSF

assigned to the Carswell Administrative Unit, unless the PSF has been waived.

A male inmate who has escaped from a secure facility (prior or instant offense) with or without the threat of violence or who escapes from an open institution or program with a threat of violence shall be housed in at least a Medium security level institution, unless the PSF has been waived.

**M**      PRISON DISTURBANCE. A male or female inmate who was involved in a serious incident of violence within the institution and was found guilty of the prohibited act(s) of Engaging, Encouraging a Riot, or acting in furtherance of such as described in, but not limited to institution disciplinary codes such as 103, 105, 106, 107, 212, 213 or 218. Such a finding must be in conjunction with a period of multiple institution disruptions. Males will be housed in at least a HIGH security level institution and females shall be assigned to the Carswell Administrative Unit, unless the PSF has been waived.

**\* N**      JUVENILE VIOLENCE. A current male or female juvenile offender who has any documented single instance of violent behavior, past or present, which resulted in a conviction, a delinquency adjudication, or finding of guilt. Violence is defined as aggressive behavior causing serious bodily harm or death or aggressive or intimidating behavior likely to cause serious bodily harm or death (e.g., aggravated assault, intimidation involving a weapon, or arson).

**O**      SERIOUS TELEPHONE ABUSE. A male or female inmate who utilizes the telephone to further criminal activities or promote illicit organizations and who meets the criteria outlined below, must be assigned a PSF for Serious Telephone Abuse. A conviction is **not required** for the PSF if the Pre-Sentence Investigation (PSI) or other official documentation clearly indicates that the above behavior occurred or was attempted. An inmate who meets this criteria must be housed in at least a Low security level institution, unless the PSF is waived.



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The PSF should be entered if any **one** of the following criteria applies.

- (1) PSI or comparable documentation reveals the inmate was involved in criminal activity facilitated by the telephone who:
  - meets the definition of a leader/organizer or primary motivator; or
  - utilized the telephone to communicate threats of bodily injury, death, assaults, or homicides; or
  - utilized the telephone to conduct significant fraudulent activity (actual or attempted) in an institution; or
  - leader/organizer who utilized the telephone to conduct significant fraudulent activity (actual or attempted) in the community; or,
  - arranged narcotic/alcohol introductions while confined in an institution.
- (2) Federal law enforcement officials or a U.S. Attorney's Office notifies the Bureau of Prisons of a significant concern and need to monitor an inmate's telephone calls;
- (3) The inmate has been found guilty of a 100 or 200 level offense code for telephone abuse. (Note: 200 level offense codes will be reviewed on a case-by-case basis to determine whether the inmate meets the criteria for a PSF Serious Telephone Abuse).; or,
- (5) A Bureau of Prisons official has reasonable suspicion and/or documented intelligence supporting telephone abuse.

**Note:** Any inmate who is assigned the Serious Telephone Abuse PSF may be subject to restricted use of the telephone in accordance with Program Statement on Telephone Regulations for Inmates.

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### DISCONTINUED PUBLIC SAFETY FACTORS

D Firearms  
E High Drug  
J Designation Assessment

**REQUEST FOR PUBLIC SAFETY FACTOR WAIVER.** Only the Regional Director or designee is authorized to waive a PSF. A request for waiver of a PSF shall be submitted to the Regional Office via GroupWise form EMS 409, available on BOPDOCS. The form shall be completed as described below:

(1) This item should indicate the request is for waiver of a Public Safety Factor.

(2) This item should indicate whether the inmate agrees with the recommended team action. If appropriate, an explanation should be provided.

(3) This item should include current, complete, and accurate information concerning any medical problems the inmate is experiencing.

(4) This item should include a brief description of the inmate's adjustment during this period of incarceration.

(5) This item should provide disciplinary information including all actions reflected on the current Custody Classification Form (BP-338). Significant histories should be summarized.

(6) It is important that the rationale include complete and specific information providing justification to support the requested action.

(7) Indicate whether or not the inmate is eligible for a parole hearing. If yes, indicate the date of the hearing.

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Table 7-1

<b>SECURITY DESIGNATION TABLE (MALES)</b>		
<b>INMATE SECURITY LEVEL ASSIGNMENTS BASED ON CLASSIFICATION SCORE AND PUBLIC SAFETY FACTORS</b>		
<b>Classification Score</b>	<b>Public Safety Factors</b>	<b>Inmate Security Level</b>
<b>0 - 5</b>	<b>No Public Safety Factors</b> Deportable Alien Juvenile Violence Greatest Severity Offense Sex Offender Serious Telephone Abuse Threat to Government Officials Sentence Length Time remaining > 10 Yrs Time remaining > 20 Yrs Time remaining > 30 Yrs Includes non-parolable LIFE/ Death penalty cases Serious Escape Disruptive Group Prison Disturbance	<b>Minimum</b> Low Low Low Low Low Low Low Low Low Medium High Medium High High
<b>6 - 8</b>	<b>No Public Safety Factors</b> Serious Escape Sentence Length Time remaining > 20 Yrs Time remaining > 30 Yrs Includes non-parolable LIFE/ Death penalty cases Disruptive Group Prison Disturbance	<b>Low</b> Medium Medium High High High
<b>9 - 14</b>	<b>No Public Safety Factors</b> Disruptive Group Prison Disturbance Sentence Length Time remaining > 30 Yrs. Includes non-parolable LIFE/ Death penalty cases	<b>Medium</b> High High High
<b>15 +</b>		<b>High</b>

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Table 7-2

<b>SECURITY DESIGNATION TABLE (FEMALES)</b>		
INMATE SECURITY LEVEL ASSIGNMENTS BASED ON CLASSIFICATION SCORE AND PUBLIC SAFETY FACTORS		
Classification Score	Public Safety Factors	Inmate Security Level
0 - 10	<b>No Public Safety Factors</b>	<b>Minimum</b>
	Deportable Alien	Low
	Juvenile Violence	Low
	Sex Offender	Low
	Serious Telephone Abuse	Low
	Threat to Government Officials	Low
	Violent Behavior	High
	Prison Disturbance	High
	Serious Escape	High
11 - 21	<b>No Public Safety Factors</b>	<b>Low</b>
	Violent Behavior	High
	Prison Disturbance	High
	Serious Escape	High
22 +		<b>High</b>

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#### MANAGEMENT VARIABLES

Management Variables are applied to reflect and support the professional judgment of Bureau staff in order to ensure placement in the most appropriate security level institution. They are required when placement has been made and/or maintained at an institution level inconsistent with the inmate's scored security level. Application of a Management Variable requires review and approval by the Regional Director or designee. When completing the BP-338, institution staff may only enter a Management Variable which the Designator previously approved and entered as a management reason. Otherwise, the Designator or designee is the only person authorized to enter a variable. A maximum of three Management Variables may be entered for each case.

**Note:** SENTRY will not permit the simultaneous application of the Greater Security and Lesser Security MGTVs.

When a Management Variable no longer applies, institution staff shall remove the variable(s) accordingly. When no Management Variable is required, institution staff shall insert the letter "A" (NONE) in the space to signify that no MGTV(s) apply. Management Variables entered at initial designation are automatically transferred onto the BP-338, Custody Classification form.

**Request for Management Variable/Management Variable expiration date.** All requests to apply a Management Variable (MGTV) or to update the Management Variable Expiration Date (MVED) must be submitted to the appropriate Designator via GroupWise using form EMS 409. (Individual Regional Offices may request additional information.) Requests for Management Variables on WITSEC inmates are to be forwarded to the Inmate Monitoring Section in the Central Office. The following criteria shall be utilized:

a. Only Regional, CCM, or Central Office staff can apply a MGTV and update a MVED, with the exception of "I" (Med/Psych), which shall be applied and reviewed by the Central Office Medical Designator and "U" (Mariel Cuban Detainee), which shall be applied by the Community Corrections and Detention Division, Central Office.

b. When requesting a MGTV or an updated MVED, **only** sections one and six need to be addressed on the GroupWise form EMS 409. This request should normally be made to the appropriate Designator within 21 calendar days following the inmate's scheduled program review to ensure the Designator is receiving a current Custody Classification Form, BP-338. After approval by

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the Warden, the request may be routed from the unit terminal, and unit staff must enter a DST assignment using the Update Transaction. Staff will enter W MGTV as a DST assignment when the request is routed. The Regional Office staff will remove the assignment when the decision is made.

\* c. When requesting an updated MVED, staff are to indicate the recommended expiration date on the top portion of form EMS 409. \*

d. When a case with the MGTV of "I" (Med/Psych) is scheduled for review and it is anticipated that this MGTV is no longer applicable, institution staff are to complete all sections of EMS 409 form and forward the request to the Central Office Medical Designator and the appropriate Regional Office. The Central Office Medical Designator will review the case for continuation or deletion of this MGTV. If this MGTV is no longer appropriate, the Central Office Medical Designator will remove the MGTV. After the Central Office Medical Designator removes the MGTV "I," the Regional Office is to review the case for transfer. If a transfer is not appropriate, another MGTV is to be applied.

Expiration dates are to be assigned in accordance with Table 7-3. The Regional Director, or designee, must evaluate the information on the EMS 409 form to determine the appropriate expiration date for all applicable Management Variables. At the established expiration date, case management staff are to review the current Management Variable(s) to determine appropriateness. In the rare instance when more than one MGTV is applied, all expiration dates will be displayed on the BP-338. When running a SENTRY roster, each MGTV and corresponding MVED will be displayed. Inmates housed in contract facilities are excluded from this review process.

**Management Security Level (MSL).** Upon application of any of the following Management Variables: PSF Waived; Greater Security; Lesser Security, the Designator is to apply an overriding Management Security Level (MSL) to reflect the inmate's assessed security needs. This MSL takes precedence over the security level reflected in SENTRY which is based upon the scored security level and the application of Public Safety Factors. Designation must be made to a DFCL commensurate with the inmate's security needs as reflected in the Management Security Level. **If there is an extenuating circumstance in which an inmate's designation facility is inconsistent with his or her MSL, at least one additional non-MSL MGTV must be added to support and explain the inconsistency.**

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CODE DESCRIPTION - MGTV

- A **NONE.** No Management Variables apply. Institution staff are permitted to enter this item.
- B **JUDICIAL RECOMMENDATION.** A court may recommend a specific institution or program. When consistent with Bureau of Prisons' policies or when such actions are consistent with sound correctional management, the Bureau of Prisons attempts to satisfy judicial recommendations. When this is not feasible, the court is notified in writing with an explanation outlining the reasons for not satisfying that recommendation. **When the judicial recommendation is the deciding factor causing placement outside normal guidelines, this Management Variable shall apply.**
- D **RELEASE RESIDENCE.** It is the practice of the Bureau of Prisons to attempt to place each inmate in an institution that is reasonably close to the anticipated release area. Ordinarily, placement within 500 miles of the release area is to be considered reasonable, regardless of whether there may be an institution closer to the inmate's release area. This Management Variable can also apply to inmates who are within 18-24 months from release. **This Management Variable shall apply when placement of the inmate in close proximity to the release residence is the determining factor in making the designation and causes placement outside normal guidelines.**
- E **POPULATION MANAGEMENT.** Situations may occur in which an inmate requires housing in a facility which is not commensurate with his or her security level. Following are example situations: facility activation; population pressures affecting available appropriate-level bed space within 500 miles of the inmate's anticipated release residence; gang/security concerns. **When population management causes placement outside normal guidelines, this Management Variable shall apply.**
- G **CENTRAL INMATE MONITORING ASSIGNMENT.** Pursuant to the CIM Program Statement, some inmates, for specified reasons, need to be monitored or separated from others. Sometimes these special management concerns limit the options for placement. **When the CIM assignment causes**

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CODE DESCRIPTION - MGTV

placement outside normal guidelines, this Management Variable shall apply.

- I MEDICAL OR PSYCHIATRIC. An inmate who has a history of or is presently exhibiting psychiatric problems may need an initial designation to a psychiatric referral center. Similarly, documented information reflecting that the inmate may need medical or surgical treatment may require a designation to a medical referral center. Designations and redesignations of these inmates shall be made by the Central Office Medical Designator. **When the need for medical/psychiatric treatment causes placement outside normal guidelines, this Management Variable shall apply.**
  
- N PROGRAM PARTICIPATION. Occasionally, inmates become involved in specialized programs which are only available on a limited basis, or at specific institutions; in such instances, it might be appropriate to delay transfer pending completion of the program. Likewise, an inmate's ability to participate in a unique program may require placement at an institution not commensurate with his or her security level. **Accordingly, when an inmate's security level changes during participation in a special program not likely to be available in another appropriate facility, causing placement outside normal guidelines, this Management Variable shall apply.**
  
- R WORK CADRE. At secure facilities without satellite camps, the Regional Director may authorize a certain number of work cadre inmates to perform work outside the perimeter of the institution. **In some cases, placement may be outside normal guidelines, and this Management Variable shall apply.**
  
- S PSF WAIVED. An inmate may receive up to three Public Safety Factors (PSFs). PSFs may be waived after review and approval by the Regional Director or designee. **When Public Safety Factors are waived causing placement outside normal guidelines, this Management Variable shall apply.** Application of this MGTV mandates that the Regional Director determine the most appropriate level of security required by the inmate and apply a Management Security Level (MSL). The MSL must be at



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**CODE      DESCRIPTION - MGTV**

least one level less than the scored security level which is based on the Security Total and Public Safety Factor(s).

- U      **MARIEL CUBAN DETAINEE**. Mariel Cuban Detainees are given an initial custody and security level. However, Custody Classification Forms are not completed on Mariel Detainees due to the unavailability of certain data at designation (i.e., current term of confinement, length of time remaining to serve, accurate criminal history). Therefore, transfers for positive or negative behavior may cause placement of a Mariel Detainee in a facility different from his or her initial security or custody level.

This Management Variable shall be applied by the Community Corrections and Detention Division, Central Office.

Mariel Cuban Detainees whose security or custody level does not match that of their facility will have this Management Variable applied. Sentenced Mariel Cuban inmates will only have this Management Variable added if they are ordered detained upon expiration of their federal sentences and their security or custody level does not match that of their facility.

- V      **GREATER SECURITY**. There may be security concerns which are not adequately reflected in the classification scheme. In circumstances where an inmate represents a greater security risk (i.e., pending charges, detainer, escape risk but no DHO finding, etc.) than their assigned security level, they may be placed in an institution outside normal guidelines, and this Management Variable shall apply. When this MGTV is applied based on institutional behavior which is **not** supported by a UDC/DHO finding of guilt, staff shall ensure compliance with the criteria as set forth in the Program Statement on Inmate Discipline and Special Housing Units. Application of this MGTV mandates the Regional Director or designee to determine the most appropriate level of security required by the inmate and apply a Management Security Level (MSL). Designation shall then be made to a DFCL commensurate with the inmate's Management Security Level. The MSL

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**CODE DESCRIPTION - MGTV**

must be at least one level greater than the scored security level which is based on the Security Total and Public Safety Factor(s).

**W LESSER SECURITY.** There may be security concerns which are not adequately reflected in the classification scheme. In circumstances where an inmate represents a lesser security risk (i.e., detainer removed, positive adjustment, etc.) than their assigned security level, the inmate may be placed in an institution outside normal guidelines, and this Management Variable shall apply. Application of this MGTV mandates the Regional Director or designee to determine the most appropriate level of security required by the inmate and apply a Management Security Level (MSL). The MSL must be at least one level less than the scored security level which is based on the Security Total and Public Safety Factor(s).

**DISCONTINUED MANAGEMENT VARIABLES**

<b>C</b>	Age
<b>F</b>	Racial Balance
<b>H</b>	Voluntary Surrender
<b>J</b>	Custody
<b>K</b>	Detainer
<b>L</b>	Discipline
<b>M</b>	Grandfather Clause
<b>O</b>	Security
<b>P</b>	Sentence Limitation
<b>Q</b>	Sliding Scale

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Table 7-3

MANAGEMENT VARIABLE EXPIRATION TABLE		
CODE	DESCRIPTION	LENGTH
A	None	N/A
B	Judicial Recommendation	N/A
D	Release Residence/Planning	N/A
E	Population Management	Up to 18 months**
G	Central Inmate Monitoring Assignment	N/A
I	Medical/Psychiatric	6 months
N	Program Participation	Up to 18 months, at the discretion of the Regional Director**
R	Work Cadre	N/A
S	PSF Waived*	N/A (However, if an inmate is transferred to a more secure institution based on behavior related to the waived PSF, this MGTV shall be removed.)
U	Maribel Cuban Detainee	N/A
V	Greater Security*	At the discretion of the Regional Director upon recommendation from institution staff (can be extended indefinitely)***
W	Lesser Security*	N/A

\* = requires application of a Management Security Level (MSL)

\*\* = if no expiration date is entered, SENTRY will default to an expiration date 12 months in advance

\*\*\* = any valid SENTRY date may be entered; if no date is entered, SENTRY will default to N/A

# EXHIBIT C

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons

REQUEST FOR ADMINISTRATIVE REMEDY

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: BARRERA Raymond 57833-053 N-2 FMC DEVEN  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

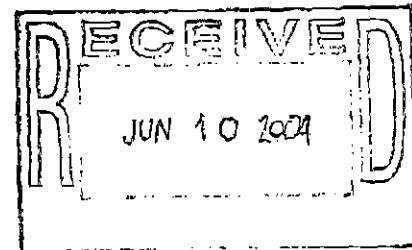
Part A- INMATE REQUEST

I AM CONTESTING THE 1963 MISDEMEANOR CHARGE THAT HAS RESULTED IN A PSF ON ME. I HAVE ATTEMPTED ON TWO OCCASSIONS TO FILE BP 8.5 INFORMAL RESOLUTIONS, THE COUNSELOR SAID THE FIRST BP 8.5 HAD BEEN MISPLACED AND COULD NOT BE FOUND. WHEN I BOUGHT SECOND BP 8.5 I WAS GIVEN BP-9 FORMS AND TOLD TO FILL THEM OUT IN RESPONSE TO THIS BP-9 REQUEST PLEASE DO THE FOLLOWING:  
① STATE THE BASIS FOR THE PSF BEING PLACED ON ME.  
② REMOVE THE PSF.

6/4/2004  
DATE

Raymond Barrera  
SIGNATURE OF REQUESTER

Part B- RESPONSE



DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 338744-FI

CASE NUMBER: \_\_\_\_\_

Part C- RECEIPT

Return to: \_\_\_\_\_  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: \_\_\_\_\_

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)

USP LVN



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APRIL 1995

## EXHIBIT D

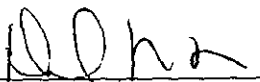
**FEDERAL MEDICAL CENTER, DEVENS, MASSACHUSETTS  
RESPONSE TO REQUEST FOR ADMINISTRATIVE REMEDY #338744-F1**

This is in response to your Request for Administrative Remedy in which you request the reason you have a Public Safety Factor of Sex Offender and that it be removed.

Investigation of your complaint revealed the following. Per Program Statement 5100.07, Security Designation and Custody Classification Manual, your September 26, 1963, conviction for Rape warrants a placement of the Public Safety Factor for Sex Offender due to you engaging in intercourse with a minor under the age of 17 years of age. Therefore, you are appropriately scored.

Based on the above information, your Request for Administrative Remedy is denied.

If you are not satisfied with this decision, you may appeal to the Regional Director at Bureau of Prisons, Northeast Region, U.S. Customs House, 7<sup>th</sup> Floor, 2<sup>nd</sup> and Chestnut Streets, Philadelphia, Pennsylvania, 19106. Your appeal must be received in the Northeast Regional Office within 20 days of the date of this response.

  
\_\_\_\_\_  
David L. Winn, Warden

7/6/4  
\_\_\_\_\_  
Date

## EXHIBIT E



U.S. Department of Justice

## Regional Administrative Remedy Appeal

Federal Bureau of Prisons

Type of use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: BARRERA JOSE R. 57833-053 N-2 FMC DEWENS  
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A—REASON FOR APPEAL THE BOP RESPONSE OF 7/6/04 FAILS TO RECOGNIZE THE PREVIOUS UNIT TEAM DETERMINATION OF MITIGATING CIRCUMSTANCES AND THEIR RECOMMENDATION OF PSE WAIVER. THE INFORMAL RESOLUTION ATTACHMENT FROM MY PRESENT UNIT MANAGER, REFERENCES A NEW YORK CONVICTION AND SENTENCE FOR RAPE OF 6 MONTHS. A SENTENCE OF 6 MONTHS FOR THE CHARGE OF RAPE IS AN ATYPICAL SENTENCE THAT OBVIOUSLY RECOGNIZED THE MITIGATING FACTORS OF THIS SITUATION. NOTE IN THE REQUEST FOR TRANSFER FROM COLEMAN THE INCORRECT DATE OF SEPARATION OF 1976. ATTACHED TO THIS BP10 IS A COPY OF FINAL JUDGEMENT OF DISSOLUTION OF MARRIAGE DATED 8/14/98. ALSO NOTE THAT I NEVER DID ANY JAIL TIME ON THE 6 MONTH SENTENCE BECAUSE IT WAS A SUSPENDED SENTENCE.

7/12/04

DATE

JOSE R. BARRERA

SIGNATURE OF REQUESTER

Part B—RESPONSE

DATE

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

FIRST COPY: REGIONAL FILE COPY

CASE NUMBER:

338744-R1

Part C—RECEIPT

CASE NUMBER:

Return to:

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT:

DATE

SIGNATURE DEPARTMENT OF REGIONAL APPEAL

BP-230(13)  
APRIL 1992

## **EXHIBIT F**

**BARRERA, Jose**

Reg. No. 57833-053

Appeal No. 338744-R1

Page One

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**Part B - Response**

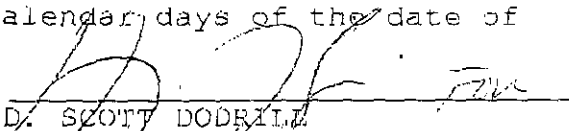
In your appeal, you feel staff at FMC Devens should consider mitigating factors, as did your previous unit team, in consideration of waiving your Public Safety Factor (PSF) of Sex Offender. You state you did not serve any jail time on your six-month sentence and request your PSF of Sex Offender be waived.

Your Request for Administrative Remedy filed with the Warden you indicated you were contesting the 1963 misdemeanor charge that resulted in the application of the PSF of Sex Offender and requested removal of the PSF. The Warden correctly advised you the reason the PSF of Sex Offender was applied to your case. In reviewing your case, we find the PSF was applied in accordance with Program Statement 5100.07, Security Designation and Custody Classification Manual. The PSF, Sex Offender, will be applied for an inmate whose behavior in the current term of confinement or prior history involved engaging in any sexual contact with a minor or other person physically or mentally incapable of granting consent. A conviction is not required for the application of the PSF if the Presentence Investigation (PSI) Report or other official documentation clearly indicates the behavior occurred in the current term of confinement or prior history.

In your appeal, it appears you are no longer contesting the PSF, but seek to have it waived due to mitigating factors. Your PSI indicates you engaged in sexual relations with a minor on two occasions and were convicted for Rape. Even if your sentence were suspended, we find your offense behavior warrants application of the PSF of Sex Offender and there is insufficient grounds to waive this application. Accordingly, your appeal is denied.

If you are dissatisfied with this response, you may appeal to the General Counsel, Federal Bureau of Prisons. Your appeal must be received in the Administrative Remedy Section, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534, within 30 calendar days of the date of this response.

Date: August 11, 2004

  
D. SCOTT DODRILE  
Regional Director

## EXHIBIT G



## **EXHIBIT H**

Administrative Remedy No. 338744-A2  
Part B - Response

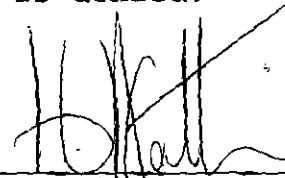
This is in response to your Central Office Administrative Remedy Appeal in which you request waiver of the Sex Offender Public Safety Factor (PSF) applied to your Custody Classification Form. You contend there are mitigating factors that warrant waiver of the PSF.

Our review reveals the Warden and Regional Director adequately responded to the issue raised in your appeal. The application of PSFs is left to the discretion of the Warden and the Regional Director per Program Statement (P.S.) 5100.07, Security Designation and Custody Classification Manual. This P.S. states that the Sex Offender PSF shall be applied when an inmate whose behavior in the instant offense or prior history includes any sexual contact with a minor or other person physically or mentally incapable of granting consent. Additionally, P.S. 5100.07 states that a conviction is not required for application of this PSF if the PSI, or other official documentation, clearly indicates the behavior occurred in the current term of confinement or prior criminal history. P.S. 5100.07 stipulates that inmates with a Sex Offender PSF shall be housed in at least a Low security level institution, unless the PSF has been waived.

As noted by the Warden and Regional Director, your prior criminal history reflects you were convicted of Rape as a result of your engaging in sexual intercourse on two occasions with a minor. Therefore, we find the PSF for Sex Offender was appropriately applied and the decision to deny your request to waive the PSF is within the discretion of the Warden and Regional Director and in accordance with policy.

Based on the foregoing, your appeal is denied.

November 19, 2004  
Date

  
Harrell Watts, Administrator  
National Inmate Appeals *cat*